

FINAL

LEBANON BUILDING CODE BOARD OF APPEALS
MONDAY, November 15, 2021, 7:00 PM
Council Chambers, City Hall or
Remote Via Virtual Platform
LebanonNH.gov/LIVE

MEMBERS PRESENT: Chair William Koppenheffer, Vice Chair Jennifer Mercer, Dan Nash, Paul McDonough (Alt), Jennifer Barkley (Alt) attended Remotely

MEMBERS ABSENT: Dave Newlove, Jeremy Katz

STAFF PRESENT: Tim Corwin – Senior Planner and Zoning Administrator

1. CALL TO ORDER

The meeting was called to order at 7:01 PM by Chair Koppenheffer.

Mr. McDonough and Ms. Barkley were given voting privileges for this meeting. Ms. Barkley was allowed to participate remotely because it was not reasonable for her to attend. She had direct exposure to Covid and is awaiting test results.

2. APPROVAL OF MINUTES

A. November 1, 2021

Mr. Nash MOVED to approve the November 1, 2021, Minutes as presented in the November 15, 2021, with amendments.

Seconded by Vice Chair Mercer.

Amendments. Page 3, Line 34; Add ‘Dan Nash stated.’

**The Vote on the Motion was approved (4-0-1).*

Chair Koppenheffer abstained.

3. REHEARING REQUEST

A. One Mechanic Street, LLC, 1 Mechanic Street (Tax Map 91, Lot 264), zoned LD:

Request to rehear an appeal concerning an interpretation of Section 306.1 (“Access”) and Section 306.5 (“Equipment and Appliances on Roofs or Elevated Structures”) of the International Mechanical Code (IMC) by the Building Code Official, denied by the Board on November 1, 2021. **BCBA2021-01A**

The status of rehearing requests is unclear, at best, under NH law. There is no provision or information about how a rehearing for the Board of Appeals should be held. There is a motion from the applicant to rehear and given the state of law the Board can dismiss the request because there is no provision under the statute, they can agree to rehear it, or they can deny the motion. Or the Board could decide to not grant the rehearing and but could decide to reconsider its own decision and that should be done within 30 days.

Because there is no provision for a rehearing, the statutes are unclear, and the Zoning Board hears appeals regarding the Building Code, the Board determined that it is reasonable to follow the Zoning Board guidelines for appeal. They proceeded to consider the motion for a rehearing.

In a Zoning Board request for a rehearing, new evidence is not permitted. The Board determines if their original decision should be upheld, reconsidered, or be reheard. With reconsideration no new evidence is allowed. With a rehearing, it is reopened for additional evidence. In this matter, because interpretation is at stake, some members thought it is reasonable that more education would be appropriate and that would merit a rehearing. Reconsideration is a matter of the Board only, but rehearing does not necessarily mean starting over. The applicant has made points in his request that warrant reconsideration. Mr. Katz has raised arguments in his motion for rehearing and some members believe the Board does not have enough evidence to make a decision. There is reason to consider why the applicant claims discrimination and estoppel. The Chair would like to see the background for those claims. Also, the Chair does not believe the inspectors testimony is completely clear. There could be a limited rehearing focusing the discussion, instead of starting from scratch. Both a rehearing and a reconsideration should be scheduled within 30 days and the timeline should be agreeable to the applicant because the rules are not clear.

Chair Koppenheffer gave examples of things he would like to know about, such as the use of man trucks for service. The questions the ICC answered had to do with platforms and heights above the ground less than 16 feet. What is the height they are dealing with? Did the ICC misunderstand the questions? And what is the substance of the claims of discrimination? Things need to be sorted out and he strongly urges a limited rehearing. It would need to be readvertised, and that could still be done in time for the meeting the first Monday in December.

***Mr. Nash MOVED to grant a rehearing for the regular meeting on Monday, December 6, 2021.
Seconded by Chair Koppenheffer.***

Vice Chair Mercer restated her opinion that this is not a Zoning Board negotiation. It is determining if the written word has been applied properly. It is not an interpretation. It is about determining if it applies and whether that agrees with the building inspectors' determination. It is not whether the building inspectors applied it properly. The Board is independent of the building inspectors. Chair Koppenheffer believes there are facts that are undetermined, and the facts would enter into making a decision.

The applicant would be asked to incorporate all prior hearing materials into the rehearing and therefore it would be a limited hearing. Everyone is anxious to get this done in a timely manner, so it is suggested that all prior testimony is incorporated.

****The Vote on the Motion was approved (4-1).
Vice Chair Mercer voted nay.***

4. ADJOURNMENT

***Mr. Nash MOVED to adjourn the meeting at 7:25 PM.
Seconded by Vice Chair Mercer.
*The Vote on the Motion was unanimously approved (5-0).***

Respectfully submitted,
Linda Billings
Recording Secretary